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RECENT DECISIONS

FRANCIS DEL. CUNNINGHAM, *Editor-in-Charge.*

ATTACHMENT—MOTION TO VACATE—SUBMITTING NEW PROOF IN SUPPORT OF WARRANT.—*K* pledged to the appellant bank a non-negotiable warehouse receipt, no notice of the pledge being given to the warehouse at the time. Thereafter, the plaintiff obtained an attachment against *K* and levied it on the goods. Subsequently notice of the pledge was given to the warehouse. Thereupon the bank moved to vacate the attachment upon the ground that the papers in support thereof did not show a cause of action. The moving papers were confined to showing the bank's lien. *Held,* that the plaintiff might not, in opposition to the motion, submit new affidavits in support of the attachment. *California Packing Corporation* v. *Phoenix & Third National Bank* (App. Div., 1st Dept., June 13, 1919, not yet reported.)

When a motion is made to vacate an attachment upon new proofs, the plaintiff is, by express statutory provision, entitled to submit new affidavits in support of his attachment. Code Civ. Proc., § 683. When the motion was made solely upon the papers upon which the attachment was granted, however, it was held prior to 1911 that the plaintiff had no such right. *Hilborn* v. *Pennsylvania Cement Co.* (1911) 145 App. Div. 442, 129 N. Y. Supp. 957; *Ladenburg* v. *Commercial Bank* (1895) 87 Hun 269, 33 N. Y. Supp. 821, *aff'd.* 146 N. Y. 406, 42 N. E. 543. And where a motion by a junior lienor was made upon papers setting forth only the moving party's lien, it was deemed made solely upon the papers upon which the warrant was granted. *Trow's Printing, etc. Co.* v. *Hart* (1881) 85 N. Y. 500; *Steuben County Bank* v. *Alberger* (1879) 75 N. Y. 179. Nor was the court allowed to "amend" the papers under Code Civ. Proc. § 723, for an affidavit cannot be amended by the court. *Davis* v. *Reflex Camera Co.* (1904) 97 App. Div. 73, 89 N. Y. Supp. 587. In 1911, Code Civ. Proc. § 768 was amended so as to authorize the filing of new affidavits in support of any "order, judgment or decree or any paper filed or proceeding taken" attacked on the ground of the insufficiency of the papers in support thereof, where this can be done "without prejudice to intervening rights". This provision has been held to apply to attachments. *Cutler* v. *Allavena* (1914) 165 App. Div. 422, 150 N. Y. Supp. 790. The court in the principal case rightly held that the provision did not apply, because in that case the filing of new affidavits in support of the attachment would have prejudiced the intervening rights of the bank.

CARRIERS—INADVERTENT MISDESCRIPTION OF GOODS—LIABILITY FOR LOSS.—Due to an inadvertent misdescription by a shipper's agent, a case of furs, so marked, was described in the bill of lading as containing dry goods; consequently the shipper was charged at the lower scheduled rate applicable to the latter, instead of at the higher rate